



Tax Shelters: Form 8886 and Form 8918, Reportable Transaction and Material Advisor Disclosure Statements, Filing Tips

Reportable Transactions

- Listed Transactions
- Confidential Transactions
- Transactions with Contractual Protection
- Loss Transactions
- Transactions of Interest



When & How to File

- Form 8886
- All years of Participation in transaction
- Attach to tax return
- First year, with Office of Tax Shelter Analysis (OTSA)



Complete Disclosure

- Describe the specific transaction
- Describe any tax result protection
- Tax treatment and potential tax benefits
- Involved Parties



Penalties

- IRC 6707A
 - Listed \$100k Natural Person, \$200k others
 - Non-Listed \$10k Natural Person, \$50k others
- IRC 6662A
 - 20% or 30% of understatement
- IRC 6707A(e)
 - Report to SEC



What is new?

- 6011 Regulations
- 6707A Regulations
- Transactions of Interest
- Listed Transactions
- Form Changes



Material Advisors

- Provide material advice, etc. with respect to a reportable transaction
- Directly or indirectly derive gross income greater than:
 - Listed - \$10,000 (natural person) or \$25,000 (others)
 - Non-listed - \$50,000 (natural person) or \$250,000 for others



Material Advisor General Rules

- Each material advisor must file a return setting forth information:
 - identifying and describing the transaction
 - describing any potential expected tax benefits
 - as prescribed by the Secretary.
- Investors and advisors must now disclose.



Filing Requirements

- File Form 8918 (replaces Form 8264) with OTSA
- Due by the last day of the month following the end of the quarter in which the advisor becomes a material advisor and
- Must be complete filing



Penalty for Failure to Disclose - § 6707

- \$50,000 for reportable transactions
- If listed, greater of \$200,000 or 50% of gross income derived by the material advisor.
- If listed and failure was intentional, the greater of \$200,000 or 75% of gross income derived by the material advisor.



Penalty for Failure to Maintain Lists - § 6708

\$10,000/day penalty may be imposed if you are required to:

- Maintain a list of advisees with respect to each transaction and
- Fail to make the list available upon written request to the IRS within 20 business days



Questions???

irs.tax.shelter.hotline@irs.gov

or

(866)775-7474 (toll free)

